

Application No. 10/600,061
Amendment dated March 6, 2007
Reply to Office Action of December 6, 2006

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REMARKS/ARGUMENTS

Applicants have reviewed and considered the non-final Office Action mailed on December 6, 2006, and the references cited therewith.

Applicants thank the Examiner for the allowance of Claims 1-19. Claim 20 stands rejected, and Applicants cancel Claim 20. Claim 19 is amended to correct a clerical error. Claims 1-19 are now pending in the application.

Amendments to the Specification

Applicants amend the specification to include a priority claim to U.S. Provisional Application No. 60/128,567, filed April 9, 1999. Applicants have concurrently filed a Petition to Accept an Unintentionally Delayed Claim for Priority Under 37 C.F.R. 1.78(a)(6), a copy of which is included for the Examiner's reference. Applicants respectfully request entry of the amendment and priority claim upon granting of the Petition.

Claim Rejections – 35 U.S.C. § 102

Applicants cancel claim 20 without prejudice or disclaimer, and the Examiner's rejection of the claim under 35 U.S.C. § 102 is now moot.

Conclusion

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) or an additional Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made and the Commissioner is authorized to charge the required fee to deposit account number 500326.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 500326.

In light of all the foregoing, believing that all things raised in Examiner's non-final Office Action have been addressed, Applicants respectfully request a notice of

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allowance and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicants invite the Examiner to contact the undersigned at 210.255.6271.

Respectfully submitted,


For Applicants

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OFFICE OF PETITIONS

In re Application of
Cesar Z. Lina et al
Application No. 10/600,061
Filed: June 20, 2003
Attorney Docket No. VAC.567.1.US

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: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)
:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed March 6, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority to prior-filed provisional Application No. 60/128,567, filed April 9, 1999.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) and (iii) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to comply with item (1). In this regard, the petition is not accompanied by an amendment, which amends the first line of the specification following the title to include a reference to the prior-filed applications. The amendment should be made in a separate paper and comply with the provisions of 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that

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each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Before the petition can be granted, a renewed petition under 37 CFR 1.78(a)(2), along with a proper reference to the prior-filed applications as noted above, must be submitted.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450


By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Correspondence regarding this decision may also be filed through the Electronic Filing System of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.78(a)(6).

Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions